



## Appendix D

### SERVICES AGREEMENT

This SERVICES AGREEMENT ("Agreement"), is made and entered into on \_\_\_\_\_, 20\_\_ ("Effective Date") by and between Ciber, Inc., a Delaware corporation ("Ciber") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Customer") (each a "party" and together, the "parties").

#### RECITALS

Customer desires to contract to obtain certain information technology services and solutions to be provided by Ciber under this Agreement and Ciber desires to provide those information technology solutions and services under the terms and conditions set forth in this Agreement.

#### AGREEMENT

##### 1. SERVICES

- 1.1 Scope of Work. Ciber will provide the services described in one or more Statements of Work signed by an authorized representative of each party (each an "SOW"). Each SOW is incorporated by reference into, and will be governed by the provisions of, DIR Contract Number DIR-TSO-2568 and this Agreement. Ciber will perform only work that is documented in an SOW. Ciber may authorize a parent, subsidiary, or affiliate of Ciber to enter into an SOW and for purposes of that SOW, such parent, subsidiary, or affiliate will be deemed "Ciber." Each SOW will describe the services to be performed ("Services"), the deliverables to be provided ("Work Products"), the schedule, the charges, and other essential information. Any inconsistency between this Agreement, an SOW, or any purchase orders or supplemental agreements, shall be decided in this order of precedence: (i) the SOW, including all Change Orders and Acceptance/Rejection Forms (as hereinafter defined), this agreement, (ii) the DIR Contract Number DIR-TSO-2568, (iii) the Agreement (Appendix D), (iv) purchase orders and supplemental agreements.
- 1.2 Change Orders. To modify or add work to an SOW a party must submit a written request to the other party. The recipient may accept or reject the requested modifications, or present a counter-proposal, in its sole discretion. Ciber may bill Customer on a time and materials ("T&M") basis for the analysis of any modification proposed by Customer. Changes to an SOW will be effective and work commenced upon the written approval of an amendment to the SOW (a "Change Order") by an authorized representative of each party. A Change Order may include a revised price and schedule that increases Ciber's costs and time to perform the changed work. Failure to agree on any adjustment shall be a dispute under the Dispute Resolution clause of this Agreement.
- 1.3 Method of Performance. Ciber will determine the method, details, and means of performing the Services and providing the Work Products. Customer may require Ciber's personnel to observe Customer's safety policies and building rules when on Customer's site. Each party has the right to control its own personnel. Designation of a particular Ciber individual in an SOW does not preclude Ciber's termination or re-assignment of the individual, provided Ciber replaces the individual with a person with appropriate skills.
- 1.4 Acceptance. Acceptance criteria for Services and Work Products shall be set forth in each SOW, or in such other document that the parties mutually agree in writing, including without limitation, project charters or project governance plans, which shall be incorporated into the SOW by this reference. Upon Ciber's delivery of Services or Work Products, Customer must inspect the Services and Work Products for conformance with specifications. If Ciber has not received written notice from Customer (the "Acceptance/Rejection Form") within 10 business days following completion of the Services or delivery of the Work Products, the applicable Services or Work Products will be deemed accepted by Customer. Furthermore, for other kinds of work performed by Ciber, including without limitation, staffing work for which acceptance criteria are not specified in an SOW, the applicable Services or Work Products will be deemed accepted by Customer on the date of delivery unless Ciber receives an Acceptance/Rejection Form or other written notice from Customer specifying the reason for non-acceptance within 10 business days after completion of the Services or delivery of the Work Products.

##### 2. CUSTOMER RESPONSIBILITIES

- 2.1 Access and Cooperation. Customer will provide the workspaces, facilities, equipment, properly configured computers (including, hardware, software, and connectivity), and personnel described in the SOW or

otherwise required by Ciber. Ciber's timely performance of the Services and provision of the Work Products are contingent on Customer promptly providing (i) all required resources, (ii) the necessary assistance and cooperation of Customer's officers, agents, and employees, and (iii) complete, clean, and accurate information and data. If a delay is caused by Customer's failure to timely perform any obligation or deliver a necessary resource, the delivery schedule for the Services and Work Products shall be extended for the period of delay.

2.2 File Back-up. Unless otherwise specified in the SOW, Customer will maintain current comprehensive back-ups for all files, data, and programs that could be affected by the Services and implement procedures for recovering and reconstructing any files, data, and programs affected by the Services.

2.3 Health and Safety Hazards. Customer will provide Ciber with written notice of any known health and safety hazards and provide Ciber's personnel with appropriate safety procedures.

2.4 Work Rules and Conduct. Customer will provide Ciber written copies of all applicable policies and procedures, including those governing safety and security, use of equipment, sexual harassment and non-discrimination, alcohol and drug use, and integrity. Customer will report to Ciber any alleged violation of Customer's workplace conduct rules involving Ciber personnel and cooperate with Ciber in investigating the alleged violation.

2.5 Personnel Changes

Personnel Schedule Changes. Customer may request changes to the schedules of Ciber personnel. If Customer does not provide a written request at least 5 business days prior to the requested change, Ciber will charge Customer for the Services as scheduled.

### **3. TERM AND TERMINATION**

3.1 Term. The term of this Agreement commences on the Effective Date and continues until the date the Agreement is terminated. Termination of an SOW will not terminate the entire Agreement unless so stated in the termination notice.

3.2 Termination for Convenience- Termination for Convenience will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 11.B.3.

3.3 Termination for Cause. Termination for Cause will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 11.B.4.

### **4. RELATIONSHIP OF THE PARTIES**

Ciber is an independent contractor. Nothing in this Agreement will be construed to make Ciber or Customer partners, joint venturers, principals, agents, or employees of the other. No officer, director, employee, agent, affiliate, or contractor employed by Ciber to perform work on Customer's behalf under this Agreement will be deemed to be an employee, agent, or contractor of Customer. Neither party will have any right, power, or authority, express or implied, to bind or make representations on behalf of the other.

### **5. COMPENSATION**

5.1 Pricing. Pricing will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix C Pricing Index.

5.2 Invoice and Payment. Invoice and payment will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 8.I and 8.J

5.3 Taxes. Taxes will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 8.E.

### **6. WARRANTY AND LIMITATIONS OF LIABILITY**

6.1 Warranty and Disclaimer. Ciber warrants that it will perform all Services in a professional and workmanlike manner and provide Work Products that conform in all material respects to the specifications set forth in the SOW. To receive warranty remedies, Customer must report any deficiencies to Ciber in writing within 30 calendar days from the date of Customer's acceptance of the Services or Work Products. Customer's

exclusive remedy and Ciber's entire liability is to provide Services to correct the deficiencies. If Ciber is unable to correct the deficiencies, Customer is entitled to recover the fees paid to Ciber for the deficient portion of the Services or Work Products. Ciber DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. Ciber makes no warranties regarding Customer or third party modifications of Work Products, any portion of any deliverable developed by Customer or by any third party, including any third party software, hardware, or other third party products provided by Ciber.

- 6.2 Limited Liability. Limited Liability will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 10.K.

## 7. INDEMNITY

- 7.1 General Indemnity. General Indemnity will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 10.A.
- 7.2 Intellectual Property Indemnity Intellectual Property Indemnity will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 5 and 10A.

## 8. NONSOLICITATION

During the term of this Agreement and for a period of one year after its termination, neither party will directly or indirectly (i) solicit for hire or engagement any of the other party's personnel who were involved in the provision or receipt of Services or Work Products under this Agreement or (ii) hire or engage any person or entity who is or was employed or engaged by the other party and who was involved in the provision or receipt of Services or Work Products under this Agreement until 180 days following the termination of the person's or entity's employment or engagement with the other party. For purposes herein, "solicit" does not include broad-based recruiting efforts, including, without limitation, help wanted advertising and posting of open positions on a party's internet site. If a party hires or engages, directly or indirectly, any personnel of the other party in violation of (ii) above, the hiring/engaging party will pay the other party a finder's fee equal to three times the greater of (i) gross monthly salary or (ii) monthly billing rate (assuming 168 hours per month) for such personnel.

## 9. DISPUTE RESOLUTION

- 9.1 Dispute Resolution will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 11.A.

## 10. GENERAL PROVISIONS

- 10.1 Applicable Laws. Each party will comply with applicable foreign, federal, state, and local laws, rules, regulations, orders, ordinances, and government requirements, including without limitation, Executive Order 11246 -- Equal Employment Opportunity.
- 10.2 Export Controls. Neither party will knowingly export or re-export or cause to be exported or re-exported any Work Product to any country for which the U.S. government requires an export license or other government approval without first obtaining the required license or approval.
- 10.3 Notices. All notices must be written and will be deemed received (i) when delivered by hand, (ii) on the next business day, if delivered by a recognized overnight courier, (iii) on the third business day if mailed (by certified or registered mail, return receipt requested) or (iv) upon separately confirmed facsimile transmission to the following addresses or facsimile numbers:

### CUSTOMER

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Fax \_\_\_\_\_

6363 S. Fiddler's Green Circle, Suite 1400  
 Greenwood Village, Colorado 80111  
 ATTN: Law Department  
 Phone 303-220-0100  
 Fax 303-224-4125

### Ciber Business Unit

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 ATTN: \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Fax \_\_\_\_\_

- 10.4 Entire Agreement. Entire Agreement will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 4.A.
- 10.5 Waiver. No delay or failure by a party in exercising any right, power, or privilege under this Agreement or any other instruments given in connection with or pursuant to this Agreement will impair any such right, power, or privilege or be construed as a waiver of or acquiescence in any default. No single or partial exercise of any right, power, or privilege will preclude the further exercise of that right, power, or privilege or the exercise of any other right, power, or privilege.
- 10.6 Survival. All terms and provisions of this Agreement that should by their nature survive the termination of this Agreement shall so survive.
- 10.7 Force Majeure. Force Majeure will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 11.C.
- 10.8 Severability. If any provision of this Agreement is held invalid, void, or unenforceable to any extent, that provision will be enforced to the greatest extent permitted by law and the remainder of this Agreement and application of such provision to other persons or circumstances will not be affected. Notwithstanding the foregoing, if the invalid, void or unenforceable provision is material to the basis of the bargain of this Agreement or an SOW, or materially affects the relative economic benefits to the parties, both parties shall in good faith agree upon an equitable modification of such provision or the application thereof.
- 10.9 Parties in Interest. This Agreement is enforceable only by Ciber and Customer. It is not a contract or assurance regarding compensation, rights, obligations, or benefit of any kind to any other party. There are no third-party beneficiaries of this Agreement.
- 10.10 Insurance. Insurance will be in accordance with the DIR Contract Number DIR-TSO-2568, Appendix A Section 10.N.

The parties, intending to be legally bound, have executed this Services Agreement on the date first set forth above.

**CUSTOMER**

**CIBER, INC.**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Print Name*

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*Title*

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